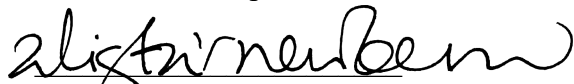


The joint motion to reconsider is GRANTED. The Magistrate Judge's courtroom deputy will communicate with all affected parties to set a detention hearing at the earliest opportunity.



Alistair E. Newbern
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA

v.

VASILE ROSIANU

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No. 24-mj-4305

JUDGE NEWBERN

JOINT MOTION TO RECONSIDER

The United States, by and through the undersigned Assistant United States Attorney, and Defendant Vasile Rosianu, by and through his counsel, David Kentrell Fletcher, jointly request that the Court reconsider its order committing Defendant to the Eastern District of Virginia while in custody. (D.E. #5.)

At Defendant's August 16, 2024, initial appearance, the United States argued, and Defendant conceded, that he was not entitled to a detention hearing in this District. Accordingly, the Court did not hold one.

On August 20, 2024, the undersigned advised Defendant's counsel that the government believes its argument was erroneous.¹ Defendant's counsel concurs.

Federal Rule of Criminal Procedure 40(a)(i) states that the Court must proceed under Rule 5(c) as to any person who has been arrested under a warrant issued in another district for failing to appear as required by the terms of that person's release.² Rule 40(c) further gives the judge before

¹ The same day, the undersigned also confirmed with the United States Marshals Service (USMS) that Defendant remains in custody in the Middle District of Tennessee. A courtesy copy of this motion will be sent to USMS and the Pretrial Services Office upon filing.

² It is not clear that Defendant had *any* terms of release set in the Eastern District of Virginia, and therefore Rule 40 arguably does not literally apply to him. However, the government believes that Defendant should not be given *less* due process than someone with more restrictive release conditions.

whom the person appears the authority to modify a previous release or detention order issued in another district.

Courts around the country have held detention hearings for defendants arrested on out-of-district failure-to-appear warrants. *See, e.g., United States v. Fellows*, No. 1:21-MJ-0314 (DJS), 2021 WL 3025741, at *3 (N.D.N.Y. June 23, 2021) (discussing 2006 Amendments to Rule 40 and holding, “there is very little question that this Court is authorized to hold a detention hearing.”); *United States v. Zhu*, 215 F.R.D. 21, 22 (D. Mass. 2003) (noting court’s power to release a defendant arrested on an out-of-district failure-to-appear warrant, but questioning—under prior rule—its ability to hold a detention hearing when arrested on a warrant for violation of other conditions of release); FED. R. CRIM. P. 40, 2006 Amendment Notes (citing *Zhu* and stating, “The Committee believes it would be inconsistent for the magistrate judge to be empowered to release an arrestee who had failed to appear altogether, but not to release one who only violated conditions of release in a minor way.”).

Accordingly, the parties believe Defendant is entitled to a detention hearing. Furthermore, the parties believe that there is a combination of conditions which can reasonably assure Defendant’s appearance in the Eastern District of Virginia and the safety of any other person and the community. In light of that, the parties jointly request that the Court:

- (1) Reconsider its order committing Defendant to the Eastern District of Virginia while in custody;
- (2) Adopt the conditions attached hereto as Exhibit A; and
- (3) Order Defendant to appear in the Eastern District of Virginia at his next hearing; specifically, 2400 West Avenue, Newport News, VA 23607, on September 17, at 9:00 a.m.

(4) Hold a hearing to so advise Defendant.

Respectfully submitted,

HENRY C. LEVENTIS
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By:

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